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3 FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
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6 Feb 29, 2024
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8 SEAN F. McAVOY, CLERK
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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
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JOHN VALDA RICE,

Plaintiff,

v.

MELISSA ANDREWJESKI, SGT.

TURNER, GARY QUARLES, KENNETH

LYBBERT, C. JAWILI, SHANE RIRIE,

SGT MONOHAN, RONNA COLE,

Defendants.

No. 2:23-cv-00087-SAB

**ORDER DENYING AS MOOT
PLAINTIFF'S MOTION FOR
RECONSIDERATION;
DENYING PLAINTIFF'S
MOTION TO RESCIND AND
REQUEST TO GRANT
PROPOSED MOTION FOR
RECONSIDERATION**

ECF NOS. 36, 46

BEFORE THE COURT are Plaintiff John Valda Rice's Motion for Reconsideration, ECF No. 36, and Motion to Rescind his Motion for Reconsideration and File Revised Motion for Reconsideration, ECF No. 46. Plaintiff, a prisoner currently housed at the Monroe Correctional Complex, Twin Rivers Unit, is proceeding *pro se* and *in forma pauperis*. Defendants have been served and counsel has entered an appearance on behalf of Defendants.

On January 10, 2024, this Court issued an Order Dismissing Second Amended Complaint in Part and Directing Service of Eighth Amendment Claims Against Defendants Melissa Andrewjeski, Ronna Cole, Shane Ririe, Gary Quarles, **ORDER DENYING AS MOOT MOTION FOR RECONSIDERATION;
DENYING MOTION TO RESCIND AND REQUEST TO GRANT
PROPOSED MOTION FOR RECONSIDERATION -- 1**

1 Sgt. Turner, C. Jawili, Kenneth Lybbert, and Sgt. Monohan. ECF No. 35. On
 2 January 17, 2024, Plaintiff filed the instant Motion for Reconsideration, asking the
 3 Court to reverse its decision to dismiss several Defendants from this action and to
 4 add as Defendants two individuals that he forgot to name in his Second Amended
 5 Complaint (“SAC”). ECF No. 36 at 7. He informs the Court that due to “his drug
 6 induced fugue state[,]” he forgot to include two additional Defendants in his
 7 SAC. *Id.* at 4. He states that there “was clear error – on [Plaintiff’s] part – due to
 8 the extraordinary, highly unusual circumstances” and claims that he provided
 9 himself with something akin to ineffective assistance of counsel. *Id.* at 6–7.

10 In his Motion for Reconsideration, Plaintiff “acknowledges that he wasn’t
 11 clear insofar as their actions/inactions and is hoping to clarify it in a Third
 12 Amended Complaint should the Court grant him leave to file it.” ECF No. 36 at
 13 5. He also states his intention to submit “a proper Third Amended Complaint
 14 which he hopes to submit within the next week and prays the Court will give him
 15 leave to file.” *Id.* at 2. In a letter to the Court, filed on February 5, 2024, Plaintiff
 16 states, “An associate is helping me with a proposed TAC so that a legible and
 17 complete complaint can be considered.” ECF No. 45 at 1.

18 Also on February 5, 2024, Plaintiff filed the instant Motion to Rescind his
 19 Motion for Reconsideration. ECF No. 46. He asks the Court to rescind his January
 20 17, 2024 Motion for Reconsideration because the Motion “was deficient and
 21 unedited.” ECF No. 46 at 1. He attaches a “replacement” Motion for
 22 Reconsideration, which he asks the Court to accept. *Id.*; ECF No. 46-3 at 1-18. He
 23 also states, “I hope to be submitting a Third Amended Complaint VERY soon.”
 24 ECF No. 46-1 at 1.

25 Plaintiff claims that “unusual circumstances” warrant the granting of his
 26 Motion to Rescind and his revised Motion for Reconsideration because he was in a
 27 “drug induced altered state of mind” while preparing his SAC. ECF No. 46-3 at
 28 2. He states he “believes that the evidence will show that a couple of unintentional

**ORDER DENYING AS MOOT MOTION FOR RECONSIDERATION;
 DENYING MOTION TO RESCIND AND REQUEST TO GRANT
 PROPOSED MOTION FOR RECONSIDERATION -- 2**

1 errors occurred as two claims were overlooked or possibly not
 2 noticed/decipherable mixed into the mess of the last two pages of his
 3 complaint.” *Id.* Plaintiff asks that the Court “allow him to present a complete Third
 4 Amended Complaint that includes the defendants that [Plaintiff] believes have
 5 violated his civil rights, some knowingly risking his life.” *Id.* at 10.

6 MOTION FOR RECONSIDERATION

7 A motion for reconsideration may be reviewed under either Federal Rule of
 8 Civil Procedure Rule 59(e) (motion to alter or amend a judgment) or Rule 60(b)
 9 (relief from judgment). *Sch. Dist. No. IJ, Multnomah Cnty., Or. v. ACandS, Inc.*, 5
 10 F.3d 1255, 1262 (9th Cir. 1993). “A district court may properly reconsider its
 11 decision if it ‘(1) is presented with newly discovered evidence, (2) committed clear
 12 error or the initial decision was manifestly unjust, or (3) if there is an intervening
 13 change in controlling law.’” *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th
 14 Cir. 2013) (*quoting School Dist. No. IJ, Multnomah Cnty., Or.*, 5 F.3d at 1263).
 15 “There may also be other, highly unusual, circumstances warranting
 16 reconsideration.” *School Dist. No. IJ Multnomah Cnty., Or.*, 5 F.3d at 1263.

17 Plaintiff appears to be asserting that “being in the drug induced altered state
 18 of mind that [he] was while preparing his Second Amended Complaint (SAC)”
 19 constitutes “extremely unusual circumstances” to grant his proposed Motion for
 20 Reconsideration. ECF No. 46-3 at 2. However, that Plaintiff was taking prescribed
 21 medication while drafting his SAC does not rise to the level of “other, highly
 22 unusual, circumstances warranting reconsideration.” *School Dist. No. IJ*
Multnomah Cnty., Or., 5 F.3d at 1263. Plaintiff’s Motion to Rescind and Request
 24 to Grant his Proposed Motion for Reconsideration, ECF No. 46, is denied.

25 Plaintiff indicates his intention to file a Third Amended Complaint to
 26 address self-identified deficiencies with his SAC. *See* ECF No. 36 at 2; ECF No.
 27 45 at 1; ECF No. 46-1 at 1. Plaintiff may submit a Motion for Leave to File an
 28 Amended Complaint along with a proposed Third Amended Complaint.

**ORDER DENYING AS MOOT MOTION FOR RECONSIDERATION;
 DENYING MOTION TO RESCIND AND REQUEST TO GRANT
 PROPOSED MOTION FOR RECONSIDERATION -- 3**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Reconsideration, **ECF No. 36**, is **DENIED** as
3 **moot.**

4 2. Plaintiff's Motion to Rescind and Request to Grant his Proposed
5 Motion for Reconsideration, **ECF No. 46**, is **DENIED**.

6 **IT IS SO ORDERED.** The Clerk of Court is **DIRECTED** to enter this
7 Order and forward a copy to Plaintiff and counsel.

8 **DATED** this 29th day of February 2024.



12 A handwritten signature in blue ink that reads "Stanley A. Bastian".

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14 Stanley A. Bastian
15 Chief United States District Judge
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**ORDER DENYING AS MOOT MOTION FOR RECONSIDERATION;
DENYING MOTION TO RESCIND AND REQUEST TO GRANT
PROPOSED MOTION FOR RECONSIDERATION -- 4**